

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2002

CORAM:

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

W.P.No. 12610 of 1998

M/s.Vijaya Industrial Products (P) Ltd.

92, Pudupalayam Main Road

Cuddalore

rep. by its Managing Director

V.Krishnamoorthy. ... Petitioner

-Vs-

1. Government of Tamil Nadu

rep. by its Principal Secretary

Industries Department

Fort St. George

Chennai 9.

2. The Managing Director

Tamil Nadu Industrial Investment

Corporation

Chennai 35. ... Respondents

This petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, as stated below.

For petitioner : Mr.S.Vijayakumar

For respondent 1 : Mr.M.Mahalingam

For respondent 2 : Ms.B.Saraswathy

: O R D E R

The petitioner-Company praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the first respondent in letter No.339/MIG-II/97, dated 6-11-1997, and to quash the same, consequently directing the respondent to sanction the balance subsidy amount of Rs.5 lakhs in terms of G.O.Ms.No. 306, dated 22-05-1987 in consonance with the clause 1.4 of G.O.Ms.No. 149, dated 1.4.1991 to the petitioner.

2. In the affidavit filed in support of the Writ

Petition, the petitioner would submit that it is a Registered Company operated with the object of manufacturing nylon Monofilament Fishnet Twins at SIPCOT Industrial Complex, Cuddalore; that the petitioner was allotted two crores of developed plot for establishing the factory as per reference dated 29-01-1991 and also sanctioned with the loan of Rs. 95 lakhs by letter dated 28-02-1991; that the SIPCOT also sanctioned a further sum of Rs. 41 lakhs for the estimated cost of Rs. 207 lakhs;

that the petitioner is entitled to subsidy of Rs. 20 lakhs as per letter dated 28-02-1991 of the TIIC which was granted in accordance with G.O. Ms.No. 306 dated 22-05-1989 of Industries (MIG 2) Department. The said G.O. further states that a Capital subsidy of 15% subject to maximum of 20 lakhs will be made available to medium and major industries to be set up in growth centres and industrial complexes at SIPCOT and as per the said G.O. the petitioner is entitled to claim the said subsidy of Rs. 20 lakhs, since the petitioner-Company falls within the enlisted category of Industries. The petitioner would further state that he placed orders for the supply of machineries for implementation of the project based on the loan sanctioned and the subsidy announced.

3. Further stating that the petitioner requested for enhancement of the loan amount with TIIC on various reasons pursuant to which TIIC had accepted to revise the loan amount as per its letter No. Projects/94-95/JSK dated 18-05-1994 and revising the earlier sanctioning order, but the subsidy earlier granted for an amount of Rs. 20 lakhs was reduced to Rs. 15 lakhs referring to G.O. 149, Industries dated 1-4-1991. But the G.O. also states that;

"Units which have obtained Term Loan or taken effective steps before 1.4.1991 will be eligible for subsidy as per G.O.Ms.No. 306 Industries dated 22-05-1983 as the case may be."

"Small Scale Industries units which had tied up their means of finance prior to this date of order have taken effective steps as the case may be, will be eligible for the then existing rates of subsidy and other conditions as per the then existing order".

Laying emphasis on the above version of the G.O. and further stating that the TIIC misinterpreted the G.O. dated 1.4.1991 by reducing the subsidy would seek for the order dated 1.4.1991 of the first respondent to be quashed.

4. In the counter affidavit filed on behalf of the second respondent it would be revealed that the TIIC obtains refinancing facility from apex financial institutions, namely, IDBI and SIDBI and lends to entrepreneurs at reasonable rates of interest; that the Central Government by its notification issued from time to time under Section 46 of the State Financial Corporation Act, 1951, made certain provisions of the Act, namely, Sections 29, 30, 31, 32 etc. applicable to the Corporation for the purpose of speedy recovery of dues to the Corporation; that the petitioner-Company which was engaged in production of nylon fishnets availed financial assistance from Pondicherry Industrial Promotion Development and Investment Corporation (PIPDIC) for setting up a unit for which the respondent sanctioned a term loan of Rs. 3 lakhs to the petitioner during 1989 for purchase of additional equipments and later desiring to start a new unit at the SIPCOT Industrial Complex, Cuddalore, had approached the SIPCOT for assistance which allotted the land and also sanctioned a term loan of Rs. 136 lakhs for setting up a new unit at Cuddalore for manufacture of fishnet yarn and fishnet; that since there was some difficulty in opening of LC, on the advice of SIPCOT, this respondent sanctioned Rs. 95 lakhs to the petitioner under ADB Line of Credit on 12-02-1991, and the remaining loan of Rs. 41 lakhs was agreed to be disbursed by SIPCOT; that the eligible subsidy at the time was Rs. 20 lakhs as per G.O.Ms.No. 306 dated

22-05-1989, which was sanctioned.

5. The counter affidavit would further go to state that though the loan was sanctioned, the petitioner-Company did not come forward to avail the same and hence, the loan lapsed along with the subsidy sanctioned; that at the request of the petitioner the loan was reappraised on 16-06-1992 and a sum of Rs. 86 lakhs was sanctioned as term loan; that at that point of time the eligible subsidy was Rs. 15 lakhs as per G.O.Ms.No. 149 dated 1.4.1991 which was sanctioned; that here again the petitioner-Company failed to avail the loan even after a period of one year and eleven months; that again the petitioner approached the respondents on 11-05-1994 and a term loan of Rs. 105.75 lakhs was sanctioned, out of which the petitioner-Company availed Rs. 103.85 lakhs; that the eligible subsidy at that point of time being Rs. 15 lakhs as per the said G.O.Ms.No. 149 dated 1-4-1991 the amount was sanctioned and availed, besides sanctioning on 11-01-1995, a short term loan of Rs. 15 lakhs which was also availed; that as the petitioner defaulted in repayment of the loan, the second respondent approved the reschedule of the principal and interest on 3-7-1998; that there is no misinterpretation of the reading in reading G.O.Ns.No. 306/1989 and 149/1991; that a plain reading of paragraph 2 of G.O.Ms.No. 149/1991 would reveal that only select categories of industries ordered in G.O.Ms. 306 dated 22-05-1989 would be eligible to retain the previous rate of special subsidy. The petitioner does not come under any of the categories found in para 4 of G.O.Ms.306 dated 22-05-1989; that the petitioner is only entitled for Capital subsidy and not for special subsidy.

6. Further stating that even when the petitioner-Company was sanctioned a loan of Rs. 95 lakhs with the subsidy of Rs. 20 lakhs on 12-02 -1991, it did not come forward to avail the loan and when a reduced subsidy of Rs. 15 lakhs was sanctioned on 16-06-1992, the petitioner did not object to the same; that as a result of which the earlier sanction of Rs. 20 lakhs as subsidy lapsed along with the term loan which was not availed; that the eligibility of subsidy arises only on the availing of the term loan, since they are inter-related; that when the petitioner failed to avail the term loan in time and it is lapsed, the same is the fate of the subsidy and hence, the right to avail the subsidy is lost; that there cannot be a subsidy without a corresponding disbursement of Term Loan, on such averments the petitioner would pray to dismiss the Writ Petition, since the same is devoid of merits.

7. During arguments the learned counsel appearing on behalf of the petitioner would lay emphasis on the point based on the subsidy of Rs. 20 lakhs announced. The petitioner ventured to avail the loan and the doctrine of promissory estoppel operates. At this juncture the learned counsel would also cite a judgment reported in THE UNION OF INDIA AND OTHERS VS. M/S. ANGLO AFGHAN AGENCIES ETC., (AIR 1968 SC 718) which has been considered in the later judgment of the Apex Court in M/S.MOTILAL PADAMPAT SUGAR MILLS CO. LTD. VS. THE STATE OF UTTAR PRADESH AND OTHERS (AIR 1979 SC 621), wherein, it is held: "Then we come to the celebrated decision of this Court in the IndoAfghan Agencies Case (AIR 1968 SC 718) (supra). It was in this case that the doctrine of promissory estoppel found its most eloquent exposition. We

may briefly state the facts in order to appreciate the ratio of the decision. Indo-Afghan Agencies Ltd. who were the respondents before the Court, acting in reliance on the Export Promotion Scheme issued by the Central Government, exported woollen goods to Afghanistan and on the basis of their exports claimed to be entitled to obtain from the Textile Commissioner import entitlement certificate for the full f.o.b. Value of the goods exported as provided in the scheme. The Scheme was not a statutory Scheme having the force of law but it provided that an exporter of woollen goods would be entitled to import raw-material of the total amount equal to 100% of the f.o.b. Value of his exports. The respondents contended that, relying on the promise contained in the Scheme, they had exported woollen goods to Afghanistan and were, therefore, entitled to enforce the promise against the Government and to obtain import entitlement certificate for the full f.o.b. Value of the goods exported, on the principle of promissory estoppel. This contention was sought to be answered on behalf of the Government by pleading the doctrine of executive necessity and the argument of the Government based on this doctrine was that it is not competent for the Government to fetter its future executive action which must necessarily be determined by the needs of the community when the question arises and no promise or undertaking can be held to be binding on the Government so as to hamper its freedom of executive action. Certain observations of Rowlatt, J., in *Rederiaktiabolaget Amphitrite v. R.* (1921) 3 KB 500 (supra) were sought to be pressed into service on behalf of the Government in support of this argument. We have already referred to these observations earlier and we need not reproduce them over again. These observations undoubtedly supported the contention of the Government but it was pointed out by this Court that these observations were disapproved by Denning, J., in *Robertson v. Minister of Pensions* (1949) 1KB 227 (supra) where the learned Judge said that

"the Crown cannot escape by praying in aid the doctrine of executive necessity, that is, the doctrine that the Crown cannot bind itself so as to fetter its future executive action.... the defence of the executive necessity is of limited scope. It only avails the Crown where there is an implied term to that effect or that is the true meaning of the contract".

And this statement of Denning, J., was to be preferred as laying down the correct law on the subject. Shah, J., speaking on behalf of the Court, observed (at p.723 of AIR SC):--

" We are unable to accede to the contention that the executive necessity releases the Government from honouring its solemn promises relying on which citizens have acted to their detriment. Under our constitutional set-up no person may be deprived of his right or liberty except in due course of and by authority of law: if a member of the executive seeks to deprive a citizen of his right or liberty otherwise than in exercise of power derived from the law common or statute the Courts will be competent to and indeed would be bound to, protect the rights of the aggrieved citizen".

The defence of executive necessity was thus clearly negated by this Court and it was pointed out that it did not release the Government from its obligation to honour the promise made by it, if the citizen, acting

in reliance on the promise, had altered his position. The doctrine of promissory estoppel was in such a case applicable against the Government and it could not be defeated by invoking the defence of executive necessity."

With such of those arguments, the learned counsel would pray to allow the Writ Petition.

8. In reply, the learned counsel appearing on behalf of the respondent laying emphasis on the averments of para 10 of the counter would submit that only selected category of industries ordered in G.O.Ms. No. 306 dated 22-05-1989 would be eligible to retain the previous rate of special subsidy, which means it applied only to leather and electronic industries; that the petitioner-Company does not fall under these categories and it is only entitled for the capital subsidy and not the special subsidy.

9. In consideration of the pleadings by parties, having regard to the materials placed on record and upon hearing the learned counsel for both what comes to be known is that the petitioner under misconception that he is entitled to special subsidy as per G.O.Ms.306 dated 22-05-1989 has come forward to file the Writ Petition seeking to order the subsidy of Rs. 20 lakhs, instead of the subsidy of Rs. 15 lakhs. The petitioner-Company does not fall under the special subsidy category of leather and electronic industries and therefore, it is not entitled to the special subsidy under the relevant G.O. Moreover, the very G.O. under which the deduction of subsidy of Rs. 5 lakhs is said to have been effected is not under challenge and it is only the letter dated 6-11-1997 declining to comply with the request of the petitioner from the Industries Department that has been challenged; that even according to the petitioner the reduced subsidy amount of Rs. 5 lakhs has been effected as per G.O. Ms. No. 149 of 1991 dated 1-4-1991 for medium and major industries set up in SIPCOT Industrial Complex which stands unaffected and so long as this G.O. is not challenged, there is no relevance in the petition. Even on facts the petitioner does not have a concrete case, since it is the strong contention of the respondents that the special subsidy does not at all apply to the case of the petitioner type of industry and therefore, in all respects the case of the petitioner should fail. Doctrine of legitimate expectation or promissory estoppel has no basis in the facts and circumstances of the case, since at no point of time according to the Respondents the petitioner had been given to understand that the special subsidy applied to the case of the type of the petitioner-industry and therefore, the proposition propounded in the judgment cited in favour of the petitioner's case does not also apply to the facts of the case and therefore, in these circumstances the Writ Petition should only fail.

10. In result,

(i) the above Writ Petition has no merit and the same is dismissed as such.

(ii) no costs.

25-02-2002

Index: Yes

Website: Yes

paa

To

1. The Principal Secretary
Government of Tamil Nadu
Industries Department
Fort St. George
Chennai 9.

2. The Managing Director
Tamil Nadu Industrial Investment
Corporation
Chennai 35.

V.KANAGARAJJ
W.P.No. 12610/1998
25-02-2002

